

Rosco vs. Española Public Schools
DPH# 1112-18

MEDIATION AGREEMENT

THIS MEDIATION AGREEMENT is made and entered into pursuant to 34 C.F.R. § 300.506 by and among S [REDACTED] S [REDACTED] by his guardians Russell and Bonnie Rosco, individually and on behalf of S [REDACTED] S [REDACTED] (collectively referred to as [REDACTED]), and the Española Public Schools (referred to as "EPS"), in resolution of all claims between the parties under the Individuals with Disabilities Education Act through the date of this Mediation Agreement.

[REDACTED] and EPS (collectively referred to as "the Parties"), desiring to resolve all claims under the Individuals with Disabilities Education Act (IDEA) through the date of this Mediation Agreement, agree to the following:

1. The Parties agree to amend S [REDACTED] IEP dated November 8, 2011 without a meeting. The Parties further agree that paragraphs 2-9 of this Mediation Agreement shall constitute the amendments to the IEP, and that the IEP dated November 8, 2011 as amended by this Mediation Agreement is appropriate and shall remain in effect until S [REDACTED] annual IEP meeting to be held on or before August 25, 2012.
2. Homebound placement to be carried out during school hours in the home for 20 hours per week through the month through Feb. 29, 2012 then change to 10 hours per week from March 1, 2012 through the remainder of the 2011-2012 school year constitutes the least restrictive environment for S [REDACTED] until his annual IEP meeting. During May 2012, based on progress monitoring by the homebound team, S [REDACTED] will be permitted to attend some selected activities each week in the Carlos Vigil Middle School setting with his homebound teacher to begin a transitioning phase back on to a school campus for the beginning of the 2012-2013 school year. The homebound teacher will communicate to the District when and where these visits will occur. Per [REDACTED] request, the district homebound teacher will supply a district laptop on any given day that task engagement requires S [REDACTED] to use a district laptop. Per [REDACTED] request, S [REDACTED] will not be issued a district laptop.
3. The Parties agree that the following present levels of academic achievement and functional performance are based on objective data to progress monitor the student and are appropriate:
 - a. Academic: Based on S [REDACTED] Measures of Academic Performance (MAP) data for Fall 2011 he scored 228 for Math and 217 for Reading, which is above the district average range for his grade level; and
 - b. Writing: 3 writing samples to be obtained by EPS from S [REDACTED] using the school rubric.

- c. Behavior: One week of data collection by EPS using the Revised Daily Collection Sheet.
4. The Parties agree that the following measurable goals are appropriate and allow for student progress monitoring:
- a. Writing: By August 25, 2012, S [REDACTED] will score proficient in 3 out of 5 writing samples using the school rubric, when given a prompt; and
 - b. Behavior:
 - 1) By 8/25/2012, S [REDACTED] will demonstrate the ability to express his feelings including needs, frustrations, and anger in a positive manner as measured by observations and data collection.
 - a) S [REDACTED] will demonstrate positive conflict resolution skills 3 of 5 observed times, based on ABC Chart.
 - b) S [REDACTED] will decrease discipline write ups to 1 or less every 2 weeks, based on actual write ups.
 - c) S [REDACTED] will "use his voice" by asking for help when he needs it 60% of the time for academic tasks, interpersonal issues, or other need, based on documentation on the Daily Data Collection Chart.
 - 2) By 8/25/2012, S [REDACTED] will demonstrate improved peer interactions, as follows:
 - a) S [REDACTED] will work positively in groups with peers for four (4) 15 minute time periods, a total of 60 minutes per day for 9 consecutive weeks, as measured by the daily data collection chart.
5. The Parties agree that the attached accommodations and modifications ("Attachment 1") which are also included in the Weekly Progress Report constitute appropriate accommodations and/or modifications and promote increased work production by S [REDACTED].
6. The Parties agree that the following constitutes an appropriate Behavior Intervention Plan (BIP) and system of objective data collection in order to progress monitor Skylar:
- a. A revised sample Daily Data Collection chart based on objective data will include the additional behavior of using his voice to ask for help ("Attachment 2").
 - b. An introductory process for S [REDACTED] if and when a substitute teacher or educational assistant needs to be utilized as follows: EPS will compile a list of substitute teachers and education assistants to ensure continuity when S [REDACTED] teachers are absent. The substitute staff will be introduced to the strategies outlined in S [REDACTED] BIP, accommodations and modifications, as well as positive behavior supports. Substitute staff will also be introduced to the ABC Form, Daily Behavior Chart and Weekly Progress Reports to ensure S [REDACTED] receives all incentives earned. The charts will serve as a reinforcement to implement the effective strategies utilized to ensure S [REDACTED] success. S [REDACTED] case manager will be responsible for carrying out these activities on behalf of EPS. S [REDACTED] case manager will further be responsible for introducing the substitute teacher or substitute educational assistant to S [REDACTED].

- c. Agreed upon categories of behavior that will result in suspension, in-school or out-of-school, and discipline options for other categories of behavior along with implementation procedures as reflected in the Behavior Intervention Plan (BIP) ("Attachment 3").
 - d. Informal progress meetings every 2 weeks with the core team that serves S [REDACTED] (special education teacher, case manager, building principal and school psychologist) to be organized and facilitated by the case manager.
7. The Parties agree that S [REDACTED] educational program will address his needs in the following areas:
 - a. social and emotional through strategies such as Cognitive Behavioral Therapy, social skills training through sessions with social worker and/or psychologist, and training all staff working with S [REDACTED] in the strategies outlined in his BIP, as well as positive behavior supports.
 - b. academic through strategies such as enrichment activities, choosing interest based projects, using computer and internet for research, access to online credit replacement options, offer choices in assignments and response modes, continually using a rubric for all assignments, continually using the site writing rubric for all assignments, dividing instructional time into small manageable units, providing small group and individual instruction.
 - c. behavioral through strategies such as daily behavior charts to shape desired behaviors through positive reinforcement every 15 minutes, as well as earning daily and weekly rewards when specific criterion are met and utilization of the A-B-C format to document incidents of concern.
 - d. conflict resolution strategies taught by social worker and/or psychologist.
8. The Parties agree that the following constitutes an appropriate weekly standard progress reporting system to be consistently implemented by the case manager and delivered to the legal guardian that is based on the student's goals:
 - a. Summary of the daily behavior points earned in targeted behavioral areas per class using the Weekly Progress Report ("Attachment 4");
 - b. Report of completed class work with earned grades per class using the Weekly Progress Report ("Attachment 4");
 - c. Report of completed home work with earned grades per class using the Weekly Progress Report ("Attachment 4"); and
 - d. Report of accommodations and/or modifications that were implemented per class using the Weekly Progress Report ("Attachment 4").
9. The parties agree to continue the current IEP psychological services as part of the homebound placement, and further agree that these services are appropriate. The parties further agree that social work services will be discontinued during homebound and resume following homebound. The parties agree that the IEP Team to be convened in August 2012 will address the social work services.
10. EPS acknowledges [REDACTED] preference to have James Scott continue to serve as Case Manager for [REDACTED] and the point of contact for the legal guardians concerning [REDACTED]

educational performance through the remainder of the 2011-2012 school year. The Parties agree that EPS will notify [REDACTED] in writing in the event of a change in Case Managers.

11. EPS acknowledges [REDACTED] preference that James Sandberg serve as [REDACTED] homebound teacher. The Parties agree that EPS will notify Rosco in writing in the event of a change in homebound teacher.
12. EPS agrees to conduct a Recreational Therapy Evaluation no later than March 1, 2012 to be considered at the annual IEP meeting. Rosco agrees to consent to such an evaluation by signing an EPS consent form. The parties agree that [REDACTED] will attend an EDT meeting for a review of the assessment results and if [REDACTED] is eligible will participate in an IEP Addendum meeting to address any RT services to be scheduled no later than March 10, 2012.
13. Rosco agrees to explore the use of community wrap-around services as part of FAPE by meeting with Dr. Lorraine Freedle, Ph.D., Neuropsychologist and Clinical Director of Teambuilders to discuss the range of wraparound services available within the community that might be appropriate for [REDACTED] before the annual IEP meeting. The parties agree to discuss wraparound services at the annual IEP meeting. The parties agree that [REDACTED] will initiate contact with the district to determine their availability to schedule a meeting with Dr. Freedle.
14. The parties acknowledge that EPS has requested that [REDACTED] sign a Consent to Release/Exchange Confidential Information in order to allow EPS to release and exchange confidential information with [REDACTED] medical providers in connection with [REDACTED] recent hospitalization. The purpose of the release/exchange is to assist EPS in designing and implementing an appropriate program for [REDACTED]. The parties acknowledge that EPS believes it cannot restrict the release/exchange to a single school official, Dr. Alice Meador as requested by [REDACTED]. Instead, EPS believes that any information released/exchanged would need to become part of [REDACTED] educational records, and governed by the Family Educational Rights and Privacy Act (FERPA). FERPA permits "school officials with a legitimate educational interest" to have access to educational records without parental consent. EPS believes that the school officials with a legitimate educational interest would necessarily extend beyond Dr. Meador. Since [REDACTED] is unwilling to provide a release that extends beyond Dr. Meador at this time, the parties agree that EPS will renew its request for a release and exchange of confidential information between EPS and [REDACTED] medical providers in connection with [REDACTED] hospitalization before [REDACTED] annual IEP meeting in preparation for the IEP meeting.

The parties agree that [REDACTED] will initiate contact with treatment providers from [REDACTED] recent hospitalization and any related out patient services for recommendations pertaining only to his educational program in a school setting and a homebound setting. Once obtained, [REDACTED] will deliver those educational recommendations to the district.

The parties agree that [REDACTED] will deliver a list of medications and any known side effects to the district within 24 hours of this mediation by February 2, 2012.

15. Following the annual IEP meeting, EPS agrees to provide training for the staff of the campus designated by [REDACTED] IEP Team as [REDACTED] campus for the 2012-2013 school year, by the school psychologist, Dr. Alice Meador, and/or other appropriate certified trainer(s) in the following areas:
- De-escalation techniques;
 - Conflict resolution; and
 - Positive behavioral supports.

16. The Parties acknowledge and agree that as part of this Mediation Agreement, EPS has provided to [REDACTED] with a copy of all the original staff write-ups that corroborate [REDACTED] incident/discipline reports and suspension records.


The Parties agree that the district will provide to [REDACTED] a list of any days during the 2011-2012 school year that [REDACTED] was sent home during the school day or parents picked up [REDACTED] from school by February 8, 2012.

17. The Parties agree that the attached ("Attachment 5") constitutes an accurate updated record of all [REDACTED] suspension dates and corresponding student incident/discipline reports for out-of-school suspensions during the 2011-2012 school year.
18. The Parties acknowledge and agree that the discipline records referenced in paragraphs 16-17 above include a student incident/discipline report for a November 18, 2011 incident involving [REDACTED] for "battery" and not "sexual battery"; and that any documents indicating "sexual battery" regardless of how these documents were created or obtained, will be destroyed by both parties. [REDACTED] will deliver their November 18, 2011 incident report to the district to be destroyed by February 8, 2012.
19. The Parties acknowledge and agree that as part of this Mediation Agreement, [REDACTED] was provided a copy of EPS's policies and procedures for convening a Manifestation Determination Review meeting.
20. The Parties acknowledge and agree that as part of this Mediation Agreement, [REDACTED] will be able to view the video tape which includes the guard station area at approximately 10:41a.m. to 10:45a.m. on November 28, 2011 at the mediation. After viewing the video tape, parties agree that [REDACTED] will be provided a copy of this video by the district no later than March 15, 2012.
21. The Parties agree that this Mediation Agreement shall not be construed as an admission of liability or of any wrongful act or omission by any party. Rather, the Parties mutually acknowledge and represent that this is a compromise in resolution of disputed IDEA claims.

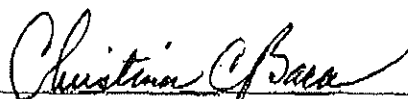
22. [REDACTED] agrees to release, and does hereby release, the Española Public Schools, including their officials, employees, officers and agents, from any and all claims under the Individuals with Disabilities Education Act (IDEA) through the date of this Mediation Agreement.
23. [REDACTED] agrees to dismiss with prejudice the Proceeding now pending before an independent due process hearing officer for the State of New Mexico, DPH #1112-18, within 24 hours from the date of this Mediation Agreement by signing and submitting to the Hearing Officer a Motion to Dismiss ("Attachment 6"). EPS may also submit the Motion to Dismiss signed by Rosco to the Hearing Officer.
24. The Parties understand that this Agreement is binding and enforceable in any State court of competent jurisdiction or in a district court of the United States pursuant to 34 C.F.R. § 300.506(b)(7).

IN WITNESS WHEREOF, the Parties have executed this Mediation Agreement, to be effective on the date signed, February 1, 2012.


Signatures:



Russell Rosco, individually and on behalf
of [REDACTED]



Representative of Española Public Schools
("EPS") with Decision-Making Authority
on behalf of EPS



Bonnie Rosco, individually and on behalf
of Skylar Smith